

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1104-AGR-E **TCEQ ID:** RN102065463 **CASE NO.:** 34167
RESPONDENT NAME: Daniel Viss dba Daniel Viss Dairy

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Daniel Viss Dairy, 1112 County Road 420, Erath County</p> <p>TYPE OF OPERATION: dairy farm</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 19, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Daniel Viss, Owner, Daniel Viss Dairy, 1112 County Road 420, Stephenville, Texas 76401 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 1, 2007</p> <p>Date of NOV/NOE Relating to this Case: May 25, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Three violations were documented.</p> <p>WATER</p> <p>1) Failed to cease applying waste or wastewater to the land management unit ("LMU") when results of the annual soil analysis indicate a level of greater than 200 parts per million ("ppm") of extractable phosphorus in Zone 1 for a particular LMU unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"). Specifically, agricultural wastewater was applied to LMU No. 1 without a NUP after analysis of samples collected in September 2006 showed 245 ppm extractable phosphorus for Zone 1 [30 TEX. ADMIN. CODE § 321.47(h)(1)(A)].</p> <p>2) Failed to collect annual soil samples from the LMUs within the same 45 day time frame each year. Specifically, the 2005 soil samples were collected during February but the 2006 samples were collected in September [30 TEX. ADMIN. CODE § 321.47(g)(4)].</p> <p>3) Failed to conduct an annual analysis of at least one representative sample of irrigation wastewater and manure/litter for total nitrogen, total phosphorus, and total potassium. Specifically, irrigation wastewater and manure/litter were not analyzed in 2006 [30 TEX. ADMIN. CODE § 321.47(f)(11)].</p>	<p>Total Assessed: \$5,830</p> <p>Total Deferred: \$1,166 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$184 (remaining \$4,480 due in 25 monthly payments of \$176 each and one final payment of \$80)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease applying agricultural wastewater to LMU No. 1 until a detailed NUP has been developed for the Facility;</p> <p>b. Within 30 days after the effective date of this Agreed Order, develop a procedure to collect annual soil samples from the LMUs within the same 45 day time frame each year;</p> <p>c. Within 60 days after the effective date of this Agreed Order, conduct analysis of at least one representative sample of irrigation wastewater and one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium;</p> <p>d. Within 90 days after the effective date of this Agreed Order, develop and implement a NUP for LMU No. 1; and</p> <p>e. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through d.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

TCEQ

DATES	Assigned	11-Jun-2007	Screening	11-Jul-2007	EPA Due	
	PCW	12-Jul-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Daniel Viss dba Daniel Viss Dairy
Reg. Ent. Ref. No.	RN102065463
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34167	No. of Violations	3
Docket No.	2007-1104-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Thomas Jecha
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$5,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **6% Enhancement** **Subtotals 2, 3, & 7** **\$330**

Notes: Enhancement for one NOV with similar and one NOV with dissimilar violations issued to this facility during the past five years. Credit is also given for one audit NOI.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts **\$3,563** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$6,000** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,830**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$5,830**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$5,830**

DEFERRAL **20% Reduction** **Adjustment** **-\$1,166**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$4,664**

Screening Date 11-Jul-2007

Docket No. 2007-1104-AGR-E

PCW

Respondent Daniel Viss dba Daniel Viss Dairy

Policy Revision 2 (September 2002)

Case ID No. 34167

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102065463

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 6%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with similar and one NOV with dissimilar violations issued to this facility during the past five years. Credit is also given for one audit NOI.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date 11-Jul-2007

Docket No. 2007-1104-AGR-E

PCW

Respondent Daniel Viss dba Daniel Viss Dairy

Policy Revision 2 (September 2002)

Case ID No. 34167

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102065463

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.47(h)(1)(A)

Violation Description

Failed to cease applying waste or wastewater to the land management unit ("LMU") when results of the annual soil analysis indicate a level of greater than 200 parts per million ("ppm") of extractable phosphorus in Zone 1 for a particular LMU unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"). Specifically, agricultural wastewater was applied to LMU No. 1 without a NUP after analysis of samples collected in September 2006 showed 245 ppm extractable phosphorus for Zone 1.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4

306 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$4,000

Four quarterly events are recommended from the September 8, 2006 date the sample analysis report was generated until the July 11, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$897

Violation Final Penalty Total \$4,240

This violation Final Assessed Penalty (adjusted for limits) \$4,240

Economic Benefit Worksheet

Respondent Daniel Viss dba Daniel Viss Dairy
Case ID No. 34167
Reg. Ent. Reference No. RN102065463
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$1,500	1-May-2007	22-Apr-2008	1.0	\$73	n/a	\$73
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop a NUP for the Facility. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering Item (except for one-time avoided costs)

Disposal	\$2,700	9-Jan-2007	25-Apr-2007	0.3	\$39	\$784	\$823
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to haul approximately 672,000 gallons of liquid waste at ten cents per ton-mile. The Date Required is the date the Respondent began applying waste to LMU No. 1 and the Final Date is the date land application ceased.

Approx. Cost of Compliance

\$4,200

TOTAL

\$897

Screening Date 11-Jul-2007

Docket No. 2007-1104-AGR-E

PCW

Respondent Daniel Viss dba Daniel Viss Dairy

Policy Revision 2 (September 2002)

Case ID No. 34167

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102065463

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 321.47(g)(4)

Violation Description

Failed to collect annual soil samples from the LMUs within the same 45 day time frame each year. Specifically, the 2005 soil samples were collected during February but the 2006 samples were collected in September.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

185

Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,666

Violation Final Penalty Total \$530

This violation Final Assessed Penalty (adjusted for limits) \$530

Economic Benefit Worksheet

Respondent Daniel Viss dba Daniel Viss Dairy

Case ID No. 34167

Reg. Ent. Reference No. RN102065463

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$800	28-Feb-2006	22-Feb-2008	2.0	\$79	\$1,587	\$1,666
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to collect and analyze soil samples. The Date Required is when samples should have been collected and the Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$800

TOTAL

\$1,666

Screening Date 11-Jul-2007

Docket No. 2007-1104-AGR-E

PCW

Respondent Daniel Viss dba Daniel Viss Dairy

Policy Revision 2 (September 2002)

Case ID No. 34167

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102065463

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 321.47(f)(11)

Violation Description

Failed to conduct an annual analysis of at least one representative sample of irrigation wastewater and manure/litter for total nitrogen, total phosphorus, and total potassium. Specifically, irrigation wastewater and manure/litter were not analyzed in 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 2

2 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

Two single events are recommended for failure to sample the irrigation wastewater and manure/litter.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,000

Violation Final Penalty Total \$1,060

This violation Final Assessed Penalty (adjusted for limits) \$1,060

Economic Benefit Worksheet

Respondent: Daniel Viss dba Daniel Viss Dalry

Case ID No. 34167

Reg. Ent. Reference No. RN102065463

Media: Water Quality

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	31-Dec-2006	31-Dec-2006	0.0	\$0	\$1,000	\$1,000
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct the 2006 annual analysis of Irrigation wastewater and manure/litter for total nitrogen, phosphorus, and potassium.

Approx. Cost of Compliance	\$1,000	TOTAL	\$1,000
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Compliance History

Customer/Respondent/Owner-Operator:	CN601116338	VISS, DANIEL	Classification: AVERAGE	Rating: 1.05
Regulated Entity:	RN102065463	DANIEL VISS DAIRY	Classification: AVERAGE	Site Rating: 0.60
ID Number(s):	WATER QUALITY NON PERMITTED	ID NUMBER	R04AG0014	
Location:	1112 COUNTY RD 420, ERATH COUNTY	Rating Date: September 01 06	Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prep	June 30, 2007			
Agency Decision Requiring Compliance	Enforcement			
Compliance Period:	June 30, 2002 to June 30, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Thomas Jecha	Phone:	512-239-2576	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A

1	06/18/2003	(56578)
2	07/01/2004	(275498)
3	08/18/2005	(405734)
4	04/26/2006	(456865)
5	01/03/2007	(533288)
6	05/25/2007	(554922)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	06/18/2004	(275498)
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(29)	
Description:	FAILURE TO SUBMIT WASTE AND WASTEWATER ANALYSIS FOR 2003.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.42(j)	
Description:	FAILURE TO SUBMIT THE REQUIRED SOIL ANALYSIS WITHIN 60 DAYS OF BEING TAKEN.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(28)(B)	
Description:	FAILURE TO OBTAIN SOIL SAMPLES FROM EACH LMU WITHIN THE SAME 45-DAY TIME PERIOD EACH YEAR.	
Date:	04/21/2006	(456865)
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.47(f)(12)	
Description:	FAILURE TO MAINTAIN THE REQUIRED BUFFER DISTANCE BETWEEN	

WATERWAYS AND WASTE APPLICATION.

F. Environmental audits.

Notice of Intent Date: 07/07/2003 (251133)

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DANIEL VISS DBA DANIEL VISS
DAIRY
RN102065463**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1104-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Daniel Viss dba Daniel Viss Dairy ("Mr. Viss") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Viss appear before the Commission and together stipulate that:

1. Mr. Viss owns and operates a dairy farm at 1112 County Road 420 in Erath County, Texas (the "Facility").
2. Mr. Viss has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Mr. Viss agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Viss is subject to the Commission's jurisdiction.
4. Mr. Viss received notice of the violations alleged in Section II ("Allegations") on or about May 30, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Viss of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Eight Hundred Thirty Dollars (\$5,830) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Mr. Viss has paid One Hundred Eighty-Four Dollars (\$184) of the administrative penalty and One Thousand One Hundred Sixty-Six Dollars (\$1,166) is deferred contingent upon Mr. Viss' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Viss fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Viss to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Four Hundred Eighty Dollars (\$4,480) of the administrative penalty shall be payable in 25 monthly payments of One Hundred Seventy-Six Dollars (\$176) each and one final payment of Eighty Dollars (\$80). The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Viss fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Viss to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Viss to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Viss have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Viss has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Viss is alleged to have:

1. Failed to cease applying waste or wastewater to the land management unit ("LMU") when results of the annual soil analysis indicate a level of greater than 200 parts per million ("ppm") of extractable phosphorus in Zone 1 for a particular LMU unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"), in violation of 30 TEX. ADMIN. CODE § 321.47(h)(1)(A), as documented during an investigation conducted on May 1, 2007.

Specifically, agricultural wastewater was applied to LMU No. 1 without a NUP after analysis of samples collected in September 2006 showed 245 ppm extractable phosphorus for Zone 1.

2. Failed to collect annual soil samples from the LMUs within the same 45 day time frame each year, in violation of 30 TEX. ADMIN. CODE § 321.47(g)(4), as documented during an investigation conducted on May 1, 2007. Specifically, the 2005 soil samples were collected during February but the 2006 samples were collected in September.
3. Failed to conduct an annual analysis of at least one representative sample of irrigation wastewater and manure/litter for total nitrogen, total phosphorus, and total potassium, in violation of 30 TEX. ADMIN. CODE § 321.47(f)(11), as documented during an investigation conducted on May 1, 2007. Specifically, irrigation wastewater and manure/litter were not analyzed in 2006.

III. DENIALS

Mr. Viss generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Viss pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Viss' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Daniel Viss dba Daniel Viss Dairy, Docket No. 2007-1104-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Mr. Viss shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease applying agricultural wastewater to LMU No. 1 until a detailed NUP has been developed for the Facility, in accordance with 30 TEX. ADMIN. CODE § 321.47(h)(1)(A);
 - b. Within 30 days after the effective date of this Agreed Order, develop a procedure to collect annual soil samples from the LMUs within the same 45 day time frame each year, in accordance with 30 TEX. ADMIN. CODE § 321.47(g)(4);
 - c. Within 60 days after the effective date of this Agreed Order, conduct analysis of at least one representative sample of irrigation wastewater and one representative sample of

manure/litter for total nitrogen, total phosphorus, and total potassium, in accordance with 30 TEX. ADMIN. CODE § 321.47(f)(11);

- d. Within 90 days after the effective date of this Agreed Order, develop and implement a NUP for LMU No. 1, in accordance with 30 TEX. ADMIN. CODE § 321.47(h)(3); and
- e. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Viss. Mr. Viss is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If Mr. Viss fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Viss' failure to comply is not a violation of this Agreed Order. Mr. Viss shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Viss shall notify the Executive Director within seven days after Mr. Viss becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Viss shall be made in

writing to the Executive Director. Extensions are not effective until Mr. Viss receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Viss in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Viss, or three days after the date on which the Commission mails notice of the Order to Mr. Viss, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Daniel Viss dba Daniel Viss Dairy
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

Date

5/2/2008

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

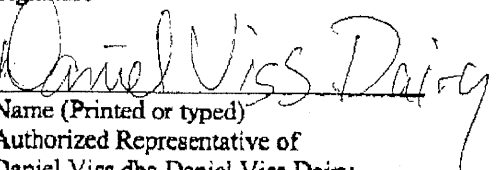
- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

Date

4-28-08


Name (Printed or typed)

Title

Owner

Authorized Representative of
Daniel Viss dba Daniel Viss Dairy

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

